

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	4:04CR3045
	)	
Plaintiff,	)	
	)	
v.	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
VICTOR C. HARRIS,	)	
	)	
Defendants.	)	

This matter is before the court upon a motion captioned “Petitioner [sic] for Transcript Copy of Docket Sheet and Sentencing Transcript Along With All Motions Filed With the Courts” (filing 132) and a separate “Application to Proceed Without Prepayment of Fees and Affidavit” on Form AO 240 (filing 133). I will deny both motions.

Filing 132 seeks copies of all court documents related to Defendant’s case and contains this statement: “Petitioner Harris moves to bring a non frivolous motion under 28 U.S.C. § 2255, but cannot do so without the aide and assistance of the requested information herein.” (Filing 132 at CM/ECF page 2.) The court interprets this statement to signify Defendant’s *intention* to file a section 2255 motion. As the court cannot act on this statement of intention unless and until a section 2255 motion is filed, the court will take no action on this statement of intention.

I will deny the motion for copies. This court is required to provide copies of court documents only after a section 2255 motion has been filed, and only if and after the court certifies that section 2255 motion is not frivolous and the documents are required to decide the issues presented by the section 2255 motion. *See United States v. Losing*, 601 F.2d 351, 352 (8<sup>th</sup> Cir. 1979) (*per curiam*) (rejecting *Rush v. United States*, 559 F.2d 455 (7<sup>th</sup> Cir. 1977)) (“constitutional requirements are met by providing such materials [trial transcripts] only after judicial certification that they

are required to decide the issues presented by a non-frivolous pending [§ 2255] case.”).

In plain language, Defendant cannot request court documents to go on a fishing expedition to look for grounds to file a section 2255 motion. Defendant must file a motion based on the information he already has, and that motion must raise specific issues. If Defendant believes that particular court documents are necessary to decide the issues, then he may file a motion requesting copies of those documents. The court will conduct an initial review of the section 2255 motion, if one is filed, under Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts. The court will provide copies of the court documents Defendant requested only if the section 2255 motion passes initial review and only if the court certifies that the requested documents are required to decide the issues presented by the section 2255 motion.

I will deny the motion for leave to proceed in forma pauperis (filing 133) as it is premature. There is no section 2255 motion before this court. Furthermore, there is no filing fee required for section 2255 motions.

Accordingly,

IT IS ORDERED that:

1. The motion in filing 132 is denied; and
2. The motion in filing 133 is denied.

April 22, 2008.

BY THE COURT:

*s/Richard G. Kopf*  
United States District Judge